



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Order 96-10-39

SERVED Oct. 31, 1996

Issued by the Department of Transportation
on the 25th day of October, 1996

Essential Air Service at:

**KINGMAN AND PRESCOTT, ARIZONA,
CORTEZ, COLORADO
ALAMOGORDO/HOLLOMAN AIR FORCE BASE,
NEW MEXICO
CLOVIS, NEW MEXICO
SILVER CITY/HURLEY/DEMING, NEW MEXICO
WORLAND, NEW MEXICO**

**Dockets 42285, OST-96-1899
45590, OST-96-1900**

**43097, OST-96-1901
45527, OST-96-1902
42345, OST-96-1903
43297, OST-96-1904**

under 49 U.S.C. 41731 *et seq.*

ORDER TO SHOW CAUSE

Summary

By this order we are tentatively reselecting Mesa Air Group to provide basic essential air service with 19-passenger, pressurized Beech1900 aircraft for the period of September 1, 1996, through September 30, 1998, at the following annual subsidy rates: Kingman and Prescott, Arizona, \$310,738; Cortez, Colorado, \$210,544; Alamogordo/Holloman Air Force Base, New Mexico, \$188,923; Clovis, New Mexico, \$208,578; Silver City/Hurley/Deming, New Mexico, \$314,303; and Worland, Wyoming, \$155,468; for an overall total of \$1,388,554 to serve these seven points.

Background

By Order 94-9-10, September 9, 1994, the Department selected Mesa Airlines, Inc. (now Mesa Air Group), to provide subsidized basic essential air service with Beech900 aircraft through August 31, 1996, at the above seven points at annual rates totaling \$1,634,650. See Appendix A for a map of the service area. The individual annual subsidy rates and services to be provided are summarized as follows:

Kingman and Prescott: Three round trips each weekday and weekend to Phoenix for Kingman and four round trips for Prescott for \$325,760 annually;

Cortez: Three round trips each weekday and weekend to Denver for \$144,273 annually;

Alamogordo/Holloman Air Force Base: Four round trips each weekday and weekend to Albuquerque for \$277,360 annually;

Clovis: Three round trips each weekday and weekend to Albuquerque for \$310,860 annually;

Silver City/Hurley/Deming: Three round trips each weekday and weekend to Albuquerque for \$408,814 annually; and

Worland: Two round trips each weekday and weekend to Denver for \$167,583 annually.

See Appendix B for a summary of historical traffic data for these points.

Mesa provided service under the terms of this selection until November 27, 1995, the effective date of Order 95-11-28, November 17, 1995. By means of that order, the Department implemented on an emergency basis program-wide reductions in essential air service payments and eligible service levels in response to the reduced program appropriation made by Congress for fiscal year 1996. Consequently, the Department reduced the subsidy rates for the above seven essential air service points to support only two round trips, five days each week to the indicated hubs. (The expiration date of August 31, 1996, set by Order 94-9-10 for Mesa's selection remained unchanged.) The revised subsidy rates, on an annual basis, were: Kingman and Prescott, \$189,326; Cortez, \$92,976, Alamogordo/Holloman Air Force Base, \$166,705; Clovis, \$200,332; Silver City/Hurley/Deming, \$263,458; and Worland, \$145,239. These rates totaled \$1,058,036 annually.

By means of notices dated December 8, 1995, Mesa announced its intention to terminate service at Kingman and Silver City/Hurley/Deming (and at four other points), effective January 1, 1996. By Order 95-12-40, December 22, 1995, and four subsequent orders, the Department requested proposals for replacement service and prohibited Mesa from terminating its service at the subject points. Mesa sought review of these orders in the United States Court of Appeals for the District of Columbia Circuit. On July 1996, the Court handed down a decision vacating the Department's orders and allowing the carrier to terminate service immediately. Nevertheless, the carrier elected to continue serving all of the communities at issue here.

Under our normal procedures when nearing the end of a selection term, we contact the incumbent carrier to determine whether it is interested in continuing service and whether it will continue to require subsidy. If the carrier wishes to continue service and indicates its belief that it will continue to require subsidy, we usually negotiate a new subsidy rate with the carrier, issue an order tentatively reselecting the carrier for a new rate term at the agreed rate, and direct other parties to show cause why we should not finalize our tentative decision. Other carriers wishing to submit competing proposals are invited to do so in response to the show-cause order. If any proposals are filed, we process them as a competitive case. Consistent with this practice, we invited Mesa to submit a proposal for the continuation of service at Kingman, Prescott, Cortez, Alamogordo/Holloman Air Force Base, Clovis, Silver City/Hurley/Deming, and Worland.

Mesa indicated its desire to continue to serve these points and submitted and negotiated a service/subsidy proposal for a new rate term. Under the terms of this proposal, Mesa would provide ten round trips each week with 19-passenger-seat Beechcraft 1900 aircraft between Kingman and Prescott and Phoenix for \$310,738 annually, Cortez and Denver for \$210,544 annually, Alamogordo/Holloman Air Force Base and Albuquerque for \$188,923 annually, Clovis and Albuquerque for \$208,578 annually, Silver City/Hurley/Deming and Albuquerque for \$314,303 annually, and Worland and Denver for \$155,468 annually, as set forth in Appendix D. (See Appendix C for summaries of the calculations of these annual rates.)

Tentative Selection Decision

Upon our review of Mesa's proposals and the levels of essential air service that we are able to support with our current appropriation, we have tentatively decided to reselect Mesa Air Group to provide essential air service at the seven points at the subsidy rates above from September 1, 1996, through September 30, 1998. We are especially impressed by the fact that since November of 1995 Mesa has continued to schedule service at five of these points (Prescott, Cortez, Alamogordo, Clovis, and Worland) that exceeds the levels that the Department is able to support with its current subsidy appropriation.

Carrier Fitness

49 U.S.C. 41738 requires that we find an air carrier fit, willing, and able to provide service before we may compensate it for essential air service. We last found Mesa fit to provide scheduled passenger service by

Order 94-9-10. The Department is currently conducting an examination of Mesa's overall fitness under the broad continuing fitness requirements of 49 U.S.C. 41110(e). Should that examination reveal any concerns relevant to Mesa's fitness, the Department would work promptly with the carrier to effect necessary corrective steps. At this stage the carrier has been fully cooperative in the Department's continuing fitness review, and the Federal Aviation Administration has advised us that the carrier is conducting its operations in accordance with the requirements of 14 CFR Part 121.

Responses

We will give interested persons 20 days from the date of service of this order to show cause why we should not make final our tentative decision to reselect Mesa Air Group. We expect persons objecting to our tentative decision to support their objections with relevant and material facts. We will not entertain general, vague, or unsupported objections.

Carriers interested in filing alternative proposals, with or without subsidy requests, should file them with the Office of Aviation Analysis¹ within the 20-day show-cause period. At the end of the period, our staff will docket any competing proposals, thereby making them public, and direct each carrier to serve a copy of its proposal on the civic parties and other applicants. We will give full consideration to all proposals that are timely filed.

Given the current budget levels, we request carriers to submit proposals providing ten nonstop or one-stop round trips each week from the eligible point(s) to the hub(s) currently served by Mesa, or any other suitable hub, with at least 15-seat aircraft. In order to assist potential applicants in making their passenger and revenue forecasts, we have included historical traffic data in Appendix B.

Procedures for Filing Replacement Proposals

For interested air carriers that are not familiar with our procedures and recommended form for supplying the necessary information, we have prepared two explanatory documents that we will make available upon request. The first describes the process for handling carrier replacement cases under 49 U.S.C. 41731, *et seq.*, and discusses in detail the process of requesting proposals, conducting reviews of the applicants, and selecting a replacement carrier. The second is an evidence request containing an explanatory statement and a copy of section 204.4 of our Aviation Economic Regulations (14 CFR 204.4). Section 204.4 describes the information required of all applicants for authority to provide basic essential air service, and provides schedules giving our recommended form for submitting data required for calculating compensation and determining the financial and operational ability of applicants to provide reliable essential air service. Applicant carriers that have already submitted this information in another case need only resubmit it if a substantial change has occurred. However, if there are more recent data or if there have been any changes to the information on file, carriers should provide updates of those information elements. Interested carriers that need to obtain copies of either of these documents may contact the Office of Aviation Analysis at (202) 366-1053.

¹ Proposals should be filed with:
Dennis J. DeVany
Chief, Essential Air Service Division, X-53
Room 6401
U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590

Community and State Comments

If we receive competing proposals, the communities and States are welcome to submit comments at any time.

² Early in the proceeding, comments on the perceived strengths and weaknesses of the proposals would be particularly helpful to the Department, although the civic parties may also express a preference for a particular carrier or proposal option at that time, if they choose. In any event, after we conclude rate conferences with all applicants, we will provide a summary of the conference results to the civic parties and ask them to file their final comment³.

Other Carrier Requirements

The Department is responsible for implementing various Federal statutes governing lobbying activities, drug-free workplaces, and nondiscrimination⁴. Consequently, all carriers receiving Federal subsidy to support essential air service must certify that they are in compliance with Department regulations regarding drug-free workplaces and nondiscrimination, and those carriers whose subsidies exceed \$100,000 over the life of the rate term must also certify that they are in compliance with the regulations governing lobbying activities. All carriers that plan to submit proposals involving subsidy should submit the required certifications along with their proposals. Interested carriers requiring more detailed information regarding these requirements as well as copies of the certifications should contact the Office of Aviation Analysis at (202) 366-1053. The Department is prohibited from paying subsidy to carriers that do not submit these documents.

This order is issued under authority delegated in 49CFR 1.56(i).

ACCORDINGLY,

1. The Department directs all interested persons to show cause within 20 days from the date of service of this order why it should not reselect Mesa Air Group to provide basic essential air service at Kingman and Prescott, Arizona; Cortez, Colorado; Alamogordo/Holloman Air Force Base, Clovis, and Silver City/Hurley/Deming, New Mexico; and Worland, Wyoming; as described in Appendix A to this order, for the period of September 1, 1996, through September 30, 1998;

2. The Department tentatively sets the final rates of compensation for Mesa Air Group for the provision of essential air service at Kingman and Prescott, Arizona; Cortez, Colorado; Alamogordo/Holloman Air Force Base, Clovis, and Silver City/Hurley/Deming, New Mexico; and Worland, Wyoming; for the period of September 1, 1996, through September 30, 1998, to be payable as follows: For each calendar week in which essential air service is provided, the amount of compensation shall be subject to the weekly ceiling rates set forth in Appendix D, and shall be determined by multiplying the subsidy-eligible departures performed during the week⁵ by the following rates:⁶

² Civic parties should file an original and five copies of their comments in Docket OST-96-1899, OST-96-1900, OST-96-1901, OST-96-1902, OST-96-1903, or OST-96-1904, as appropriate. This filing should be addressed to:
Documentary Services Division, Docket Section, C-55.1
Office of the Secretary
U.S. Department of Transportation
Room PL401
400 Seventh Street, S.W.
Washington, D.C. 20590

³ In cases where a carrier proposes to provide essential air service without subsidy and we determine that service can be reliably provided without such compensation, we do not normally hold rate conferences. Instead, we rely on the carrier's subsidy-free service as proposed.

⁴ The regulations applicable to each of these three areas are: (1) 49CFR Part 20, New Restrictions on Lobbying, implementing title 51, United States Code, section 1352, entitled, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions"; (2) 49CFR Part 29, Subpart F, Drug-Free Workplace Requirements (Grants), implementing the Drug-Free Workplace Act of 1988; and (3) 49CFR Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation--Effectuation of Title of the Civil Rights Act of 1964; 49CFR Part 27, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance; and 49CFR Part 382, Nondiscrimination on the Basis of Handicap in Air Travel.

⁵ Subsidy-eligible departures are defined as each arrival from and departure to the hub from the essential air service point. In the case of Kingman and Prescott, subsidy-eligible departures are to be calculated separately for each point, even though the carrier proposes to serve both points on the same linear routing to Phoenix.

⁶ See Appendix D for calculations.

Kingman:	\$151.88
Prescott:	\$151.88
Cortez:	\$205.81
Alamogordo/Holloman Air Force Base:	\$184.68
Clovis:	\$203.89
Silver City/Hurley/Deming:	\$307.24
Worland:	\$151.97;

3. If competing proposals are timely filed, the final rates established for Mesa Air Group in ordering paragraph (2), above, shall be effective from September 1, 1996, until further Department action;

4. We will afford full consideration to the matters and issues raised in any timely and properly filed service proposals before we take further action. If no competing proposals are filed, all further procedural steps will be deemed to have been waived, and the carrier selection tentatively made by this order shall become effective on the twenty-first day after the date of service of this order;

5. The Department directs Mesa Air Group to retain all books, records, and other source and summary documentation to support subsidy claims for payment and to preserve and maintain such documentation in a manner that readily permits the audit and examination thereof by representatives of the Department. Such documentation shall be retained for seven years or until the Department indicates that the records may be destroyed. Copies of flight logs for aircraft sold or disposed of must be retained. The carrier may forfeit its compensation for any claim that is not supported under the terms of this order;

6. We find that Mesa Air Group continues to be fit, willing, and able to operate as an air carrier and capable of providing essential air service at Kingman and Prescott, Arizona; Cortez, Colorado; Alamogordo/Holloman Air Force Base, Clovis, and Silver City/Hurley/Deming, New Mexico; and Worland, Wyoming; and

7. We will serve a copy of this order on the Governors of Arizona, Colorado, New Mexico, and Wyoming; the Aeronautics Divisions of the Arizona, Wyoming, and Colorado Departments of Transportation, the New Mexico State Highway & Transportation Department; the Mayors and Airport Managers of Kingman, Prescott, Cortez, Alamogordo, Clovis, Silver City, Hurley, Deming, and Worland; the Commanding Officer, Holloman Air Force Base; Mesa Air Group; and the air carriers listed in Appendix

By:

CHARLES A. HUNNICUTT

Assistant Secretary for Aviation
and International Affairs

(SEAL)